Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00179-CV

IN THE INTEREST OF J.A.

From the 37th Judicial District Court, Bexar County, Texas
Trial Court No. 2016PA01143
Honorable Barbara Hanson Nellermoe, Judge Presiding

Opinion by: Karen Angelini, Justice

Sitting: Karen Angelini, Justice
Luz Elena D. Chapa, Justice
Irene Rios, Justice

Delivered and Filed: August 23, 2017

AFFIRMED

Appellant Belinda A. appeals the trial court's order terminating her parental rights to her now sixteen-year-old son J.A. Belinda A. argues on appeal that the evidence is legally and factually insufficient to support the trial court's finding that termination of her parental rights is in J.A.'s best interest. We affirm.

BACKGROUND

On May 25, 2016, the Department of Family and Protective Services ("the Department") filed an original petition for protection of a child, for conservatorship, and for termination in a suit affecting the parent-child relationship. In June 2016, the trial court appointed the Department as temporary managing conservator of J.A. and ordered Belinda A. to do the following: (1) to participate in a psychological or psychiatric evaluation as scheduled by the Department; (2) to

participate in counseling as scheduled by the Department; (3) to participate in parenting classes as scheduled by the Department; (4) to participate in drug and alcohol assessments and testing as scheduled by the Department; and (5) to comply with each requirement set out in the Department's original, or any amended, service plan.

At trial, Stephanie Cortez, a supervisor with the Department's family-based services, testified that in January 2016, when J.A. was fourteen years-old, the Department received a referral for neglectful supervision of J.A. "due to [Belinda A.]'s untreated mental health and ongoing drug use." Family-based services performed drug tests on Belinda A. and J.A.'s father.[1] Belinda A. tested positive for methamphetamine, and J.A.'s father tested positive for cocaine and marijuana. According to Cortez, Belinda A. said she had tried methamphetamine "with friends and she just continued to use." Belinda A. did not "give an explanation as to . . . why she used." Belinda A. stated "she had used it and she just never stopped." Cortez further testified that J.A.'s father "had just got[ten] out of jail, prison, and he . . . admitted to alcohol use, cocaine use, and marijuana use." According to Cortez, during the parents' family-based case, Belinda A. and J.A.'s father again tested positive for illegal substances. Cortez testified that based on conversations with the parents, they used "methamphetamines, cocaine, and marijuana." Cortez testified this behavior endangered J.A.

The Department's caseworker, Patsy Haverkamp, testified that J.A. had been "on runaway status" for three months, having left his sister's home. According to Haverkamp, she still had contact with J.A. by telephone, but the Department had not been able to locate his whereabouts. Haverkamp testified two months before trial, J.A. told her he wanted his parents' rights terminated. J.A. said "he was tired of [his parents'] promises." According to Haverkamp, J.A. "is pretty

[1] The parental rights of J.A.'s father were also terminated by the trial court. J.A.'s father has not appealed.

consistent with his desires" and she believed his desire for his parents' rights to be terminated was still "true today." Haverkamp testified she had explained to J.A. that "his parents could still have their rights and still be involved with his life and the Department would take permanent managing conservatorship of him." J.A., however, replied, "No," explaining that "he didn't want them involved in his life."

Haverkamp testified that since J.A. has been "on the run," he "has consistently called [Haverkamp] once a month." Both of J.A.'s parents have told Haverkamp that J.A. calls them daily. When asked to explain why J.A. would call his parents daily but desire that they not be involved in his life, Haverkamp replied,

> [J.A.] is looking for change in the parents. And when I do question him about what I have been told by [J.A.'s father], [J.A.] makes the comment, "I'm just calling and checking on them, just to — checking on what they are doing and if they are doing what they say they are going to do."

Haverkamp testified that neither Belinda A. nor J.A.'s father had completed the services ordered by the court. The parents were ordered to undergo drug treatment and attend Narcotics Anonymous. They were ordered to take parenting and domestic violence classes. However, they had not completed any of those services. Haverkamp testified she sat in the parents' home and explained the services to them. Haverkamp also asked the parents about their current and future plans regarding J.A., but "they had no plan." Haverkamp also testified that she had not been able to get the parents drug tested. The parents "had no answer" for why they did not want to be drug tested. Haverkamp testified J.A. was removed because of drug use by the parents, and it was her belief those reasons still existed. According to Haverkamp, both parents had expressed a desire for the return of their son. "However, they won't do the services." Havercamp was asked if J.A.'s parents were aware of the trial setting. She replied that they were and had not given any explanation for why they had not appeared at trial.

DISCUSSION

Parental rights may be terminated only upon proof of clear and convincing evidence that (1) the parent has committed an act prohibited by section 161.001(b)(1) of the Texas Family Code, and (2) termination is in the best interest of the child. *See* TEX. FAM. CODE ANN. § 161.001(b) (West Supp. 2016).

When the legal sufficiency of the evidence is challenged, we look at all the evidence in the light most favorable to the trial court's finding to determine whether a reasonable trier of fact could have formed a firm belief or conviction that its finding was true. *In re J.O.A.*, 283 S.W.3d 336, 344 (Tex. 2009). "To give appropriate deference to the factfinder's conclusions and the role of a court conducting a legal sufficiency review, looking at the evidence in the light most favorable to the judgment means that a reviewing court must assume that the factfinder resolved disputed facts in favor of its finding if a reasonable factfinder could do so." *Id.* (citation omitted). "A corollary to this requirement is that a court should disregard all evidence that a reasonable factfinder could have disbelieved or found to have been incredible." *Id.* (citation omitted). "If, after conducting its legal sufficiency review of the record evidence, a court determines that no reasonable factfinder could form a firm belief or conviction that the matter that must be proven is true, then that court must conclude that the evidence is legally insufficient." *Id.* at 344-45 (citation omitted).

When a parent challenges the factual sufficiency of the evidence on appeal, we look at all the evidence, including disputed or conflicting evidence. *Id.* at 345. "If, in light of the entire record, the disputed evidence that a reasonable factfinder could not have credited in favor of the finding is so significant that a factfinder could not reasonably have formed a firm belief or conviction, then the evidence is factually insufficient." *Id.* (citation omitted). In reviewing termination findings for factual sufficiency, we give due deference to the factfinder's findings and do not supplant its judgment with our own. *In re H.R.M.*, 209 S.W.3d 105, 108 (Tex. 2006).

Belinda A. argues that the evidence is legally and factually insufficient to support the trial court's best-interest finding for the following reasons: (1) J.A.'s statement to the caseworker two months before trial was not relevant to his desire at the time of trial; (2) J.A.'s decision to run away indicates he was not making decisions in his own best interest; (3) J.A. had substantial contact with Belinda A.; and (4) Belinda A.'s illegal drug use was limited to recreational use around friends.

Under Texas law, there is a strong presumption that the best interest of a child is served by keeping the child with a parent. *In re R.R.*, 209 S.W.3d 112, 116 (Tex. 2006). However, there is also a presumption that when the court considers factors related to the best interest of the child, "the prompt and permanent placement of the child in a safe environment is presumed to be in the child's best interest." TEX. FAM. CODE ANN. § 263.307(a) (West Supp. 2016). And, in determining whether the child's parents are willing and able to provide the child with a safe environment, the court should consider the following:

(1) the child's age, and physical and mental vulnerabilities;

(2) the frequency and nature of out-of-home placements;

(3) the magnitude, frequency, and circumstances of the harm to the child;

(4) whether the child has been the victim of repeated harm after the initial report and intervention by the Department;

(5) whether the child is fearful of living in or returning to the child's home;

(6) the results of psychiatric, psychological, or developmental evaluations of the child, the child's parents, other family members, or others who have access to the child's home;

(7) whether there is a history of abusive or assaultive conduct by the child's family or others who have access to the child's home;

(8) whether there is a history of substance abuse by the child's family or others who have access to the child's home;

(9) whether the perpetrator of harm to the child is identified;

(10) the willingness and ability of the child's family to seek out, accept, and complete counseling services and to cooperate with and facilitate an appropriate agency's close supervision;

(11) the willingness and ability of the child's family to effect positive environmental and personal changes within a reasonable period of time;

(12) whether the child's family demonstrates adequate parenting skills, including providing the child and other children under the family's care with (A) minimally adequate health and nutritional care, (B) care, nurturance, and appropriate discipline consistent with the child's physical and psychological development; (C) guidance and supervision consistent with the child's safety; (D) a safe physical home environment, (E) protection from repeated exposure to violence even though the violence may not be directed at the child; and (F) an understanding of the child's needs and capabilities; and

(13) whether an adequate social support system consisting of an extended family and friends is available to the child.

Id. § 263.307(b).

In addition, courts may consider other nonexclusive factors in reviewing the sufficiency of the evidence to support the best interest finding, including (1) the desires of the child, (2) the present and future physical and emotional needs of the child, (3) the present and future emotional and physical danger to the child, (4) the parental abilities of the persons seeking custody, (5) the programs available to assist those persons seeking custody in promoting the best interest of the child, (6) the plans for the child by the individuals or agency seeking custody, (7) the stability of the home or proposed placement, (8) acts or omissions of the parent which may indicate the existing parent-child relationship is not appropriate, and (9) any excuse for the parent's acts or omissions. *Holley v. Adams*, 544 S.W.2d 367, 372 (Tex. 1976). This list is not exhaustive. *Id.*

While Belinda A. characterizes her illegal drug use as recreational, the evidence at trial showed that she had tested positive for illegal drugs on multiple occasions and would not engage in drug testing after the Department filed its petition. The trial court could reasonably infer that Belinda A. would not submit to further drug testing because she knew she would fail. There was

also testimony that Belinda A. would not engage in services designed to aid her in the return of J.A.

With respect to J.A.'s desires, J.A. told the caseworker he was looking for change in his parents, "was tired of their promises," and no longer wanted them involved in his life. We disagree with Belinda A. that J.A.'s statements made to his caseworker two months before trial were not relevant. According to the caseworker, J.A. had been consistent in his desires.

Further, Belinda A. has not shown that she could provide J.A. with a safe and stable home or meet his emotional and physical needs. Belinda A. refused to address her illegal drug use, complete the court-ordered services, or even attend the trial. There was also evidence that Belinda A. had no current or future plan for J.A.

In looking at all the evidence in the light most favorable to the trial court's finding, we hold that the trial court could have reasonably formed a firm belief or conviction that termination of Belinda A.'s parental rights was in J.A.'s best interest. *See In re J.O.A.*, 283 S.W.3d at 344. Further, in considering the entire record, including any disputed evidence, we conclude the evidence is factually sufficient to support the trial court's finding that termination of Belinda A.'s parental rights was in J.A.'s best interest. *See id.*

We affirm the trial court's order terminating Belinda A.'s parental rights.

Karen Angelini, Justice